IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.205 OF 1993

Raghuvir Atmaram Sawant
of Bombay Indian Inhabitant
residing at 21, Gurukripa Tulsibaug,
Dr.Charatsingh Colony, Andheri (E),
Bombay - 400 093, employed as
Registrar in Shri Chinai College
of Commerce and Economics,
Andheri (East), Bombay - 400 069. ....Petitioner

V/s.

1. The State of Maharashtra
through the Secretary,
Department of Education,
Mantralaya, Bombay-400 032.

2. Director of High Education,
Maharashtra State,
Central Building, Pune-1.

3. The Administrative Officer,
Higher Education Grants,
Maharashtra State,
Elphinstone Technical High
School, Bombay.

4. The Principal,
Shri Chinai College of
Commerce and Economics
Andheri (E), Bombay-400 069.

5. Laxmi Education Society,
a registered society having
its office c/o Batliboi & Co.
Apeejay House, 6th Floor,
Dr.V.B. Gandhi Road,
Fort, Bombay-1. ....Respondents

Mr.Ramesh Rammurthy for the Petitioner.
Mr.R.N. Nerlekar for Intervenor.
Mr.J.R. Yadav i/b Mr.K.S. Bapat for the Respondents.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 28TH JANUARY, 2005.

ORAL JUDGMENT (PER S.J. VAZIFDAR, J.) :

1. Respondent No.2 is the Director of Higher Education, Maharashtra State. Respondent No.3 is the Administrative Officer, Higher Education Grants, Maharashtra State. Respondent No.4 is the Principal of Shri Chinai College of Commerce and Economics, Mumbai. The Petitioner is the Registrar in Respondent No.4 college.

2. The Petitioner has sought a declaration that Respondent Nos.1 to 3 have no jurisdiction to question his appointment as Registrar of Respondent No.4 made on 8th August, 1985, a declaration that the Petitioner is entitled to be granted fixation in the scale of pay Rs.2000-3500 from the relevant date, a writ of mandamus directing Respondent Nos.1 to 3 to fix the Petitioner's pay as the Registrar in the said scale and to pay interest on the arrears of emoluments at 12% p.a. from the due date till payment and for a direction directing them to provide Respondent No.4 necessary grant to meet the said expenditure.

3. This Petition was necessitated as a result of Respondent No.3 questioning the appointment of the Petitioner as the Registrar of Respondent No.4 five years after his appointment, contrary to the orders of two of his predecessors on the complaint of certain third parties. We have come to the conclusion that the action of Respondent No.3 in doing so was unwarranted and uncalled for as a matter of propriety, on principal and on merits.

4. Respondent No.4 invited applications for the post of Registrar (hereinafter referred to as "the said post") in the scale of pay of Rs.600-1150 by an advertisement published in the 1st July, 1985 issue of the Times of India. There is no dispute about the fact that the Petitioner was fully qualified to be considered for the said post. It is not necessary therefore to set out the eligibility criteria stipulated in the advertisement.

5. A committee of three members was constituted to nominate a candidate to the said post. Ten candidates applied for the said post. Six candidates having been found to be qualified were called for an interview. Only five candidates however appeared

before the selection committee on 7th August, 1985.

. On 7th August, 1985, the committee unanimously selected the Petitioner for the said post as he ranked first in the interview.

6. About sixteen months thereafter, a representation was made by some non-teaching staff of Respondent No.4 to the management of Respondent No.4 requesting a review of the decision to appoint the Petitioner to the said post. A copy of the representation dated 29th November, 1986 was endorsed to one Mr.Borade, the then Administrative Officer who had succeeded the said Khole. Mr.Borade did not interfere with the Petitioner’s appointment.

7. The Petitioner was therefore appointed to the said post with effect from 8th August, 1985 on probation of one year in the scale of pay of Rs.600-1150. The then Administrative Officer one Khole i.e. the predecessor in office of Respondent No.3, granted the fixation to the Petitioner in the scale of pay of Rs.600-1150 i.e. the scale then prescribed for the said post. It is reasonable to presume that he did so after satisfying himself as to the validity of the Petitioner’s appointment to the

said post. By a letter dated 24th July, 1986, Respondent No.4 extended the probation period to two years. On the Petitioner having satisfactorily completed his probationary period from 8th August, 1985 to 7th August, 1987, Respondent No.4 issued a letter dated 24th February, 1988 informing the Petitioner that he was confirmed in the said post with retrospective effect from 8th August, 1987.

8. The Government of Maharashtra by a notification dated 27th July, 1989, in exercise of powers conferred by Section 77-A of the Bombay University Act, 1974 published rules known as the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Revised Pay of Non-teaching employees) Rules, 1989 which came into force with effect from 1st January, 1986. The Rules inter-alia prescribed new pay scales. The post of Registrar (Kulsachiv) which was hitherto in the pay scale of Rs.600-1150 was placed in the scale of Rs.2000-3500 in respect of colleges which had a student strength of less than 4000 and in the scale of Rs.2200-3750 in respect of colleges which had a student strength of more than 4000. The said post in Respondent No.4 admittedly fell in the scale of Rs.2000-3500.

9. It is pertinent to note that Respondent No.3 addressed the letter pursuant to the complaint received by him. This complaint was not forwarded under cover of the letter. Nor was it forwarded either to the Petitioner or Respondent No.4 despite repeated requests for the same.

10. At this stage almost five years after the Petitioner's appointment, the new and third incumbent after the Petitioner's appointment in the post of Respondent No.3 addressed a letter dated 25th September, 1990 to the Principal of Respondent No.4 allegeding that the Government had brought into force the Standard Code since 1st May, 1985 under which it was expected that the said post would be filled up as per seniority whereas the Petitioner was nominated pursuant to the said advertisement.

. The Principal of Respondent No.4 by a detailed letter dated 10th October, 1990 set out all the facts and circumstances of the Petitioner's case including what is stated by us above. The Principal of Respondent No.4 stated the fact that two predecessors in office of Respondent No.3 had interpreted the Code as it existed at the relevant

time and repelled the complaint made about the Petitioner's appointment being irregular. It is also pertinent to note that under cover of the said letter, the Principal forwarded the Government resolution which was in force in the year 1985 and expressly stated that the Government resolution which required filling up the said post by promotion only was brought into force only with effect from 5th January, 1988. The Principal addressed a further letter dated 22nd November, 1990 apprehending that Respondent No.3 may take an ex-parte decision in the matter. He stated that it would be appropriate that the case be forwarded to Director of Education (Higher Education) for orders.

11. There was no reply to the said letters. The Principal therefore by his letter dated 8th January, 1991 stated that he was awaiting the third Respondent's reply to his earlier letters.

12. We have been through both the letters of the Principal in detailed. It sets out clearly all the facts and submissions on behalf of the college as well as the Petitioner.

13. In the meantime it appears that Respondent

No.3 without even responding to the Principal's letter and that no apparent justification failed and neglected to disburse the grant in respect of the Petitioner's salary.

14. Ultimately, the Director of Education (Higher Education) i.e. Respondent No.2 by his letter dated 6th September, 1991 stated that he had learnt that the said post was filled up by violating the rules and requested the Principal to forward a copy of the advertisement. By his letter dated 8th October, 1991, the Principal once again set out all the facts.

15. In the meantime of course in view of this dispute between the Respondents inter-se, the Petitioner was deprived of the salary that he was otherwise entitled to.

16. To sum up therefore, the Petitioner's submission is that being fully qualified he was appointed to the said post in 1985. In fact at the relevant time the Standard Code Rule,1984 permitted the appointment by nomination. The requirement of filling up the said post only by promotion was introduced by the Government Resolution only with effect from 1st January, 1988. The same therefore,

did not apply to the Petitioner’s case.

17. The learned counsel appearing on behalf of the Respondents were unable to show any infirmity in the appointment of the Petitioner.

18. The conduct of Respondent Nos.2 and 3 is indeed curious. The earlier administrative officers viz. Khole and Borade impliedly if not expressly rejected all the complaints against the Petitioner’s appointment and accepted the same as valid and binding. We must clarify here that it has never been the stand and it was not even the stand of the learned counsel appearing for the Respondents before us that there were at any stage mala-fides on the part of the earlier administrative officers in refusing to interfere with the Petitioner’s appointment and sanctioning his scale of pay as a Registrar. In these circumstances, the present conduct of Respondent Nos.2 and 3 was indeed improper and uncalled for.

19. Thus fourteen months after the Petitioner’s appointment, the first representation against the same was made by certain disgruntled officers. These objections were rejected by the concerned authorities. Five years after the Petitioner’s appointment,

Respondent Nos.2 and 3 thought it fit to reopen the issue for no apparent reason. Despite being informed all the facts of the case for a considerable amount of time, the Respondents did not even respond to the letters of the Principal setting out all the facts of the case. There is no explanation whatsoever on the part of Respondent Nos.2 and 3 for their conduct and for the delay in adopting the present course of action.

20. It is also pertinent to note that two of the non-teaching staff who objected to the Petitioner's appointment, retired in 1993 and 1995. Both of them were not graduates in 1985 and where thus not eligible for being appointed to the said post. In addition thereto, both had crossed the upper age limit of 45 years. The third intervenor was not even a graduate in 1985 and was thus not eligible to be appointed to the said post.

21. In the circumstances, it is not surprising that the division bench of this Court had even by an interim order dated 23rd March, 1993 fixed the Petitioner's pay in the revised scale of Rs.2000-3500 and directed the Respondents to provide necessary grant to Respondent No.4 college to pay the

Petitioner’s salary on the basis thereof.

22. In the circumstances, Rule is made absolute in terms of prayers (a) to (e). Respondent Nos.1 to 3 shall pay the costs of this Petition to the Petitioner fixed at Rs.5000/-.

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DATE OF DECISION : 28TH JANUARY, 2005.

For Approval and Signature :

HON'BLE MR.JUSTICE A.P. SHAH

HON'BLE MR.JUSTICE S.J. VAZIFDAR

1. Whether Reporters of Local Papers may be allowed to see the judgement ?)

2. To be referred to be Reporter or not ?)